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TITLE I—SERVICES AND FACILITIES FOR  
THE MENTALLY RETARDED AND PERSONS  
WITH OTHER DEVELOPMENTAL DISABILI-  
TIES

SHORT TITLE

SEC. 100. This title may be cited as the "Develop-  
mental Disabilities Services and Facilities Construction  
Act".<sup>4</sup>

PART A—(GRANTS FOR CONSTRUCTION OF CENTERS FOR  
RESEARCH ON MENTAL RETARDATION AND RELATED AS-  
PECTS OF HUMAN DEVELOPMENT

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PART B<sup>5</sup>—CONSTRUCTION, DEMONSTRATION, AND TRAIN-  
ING GRANTS FOR UNIVERSITY-AFFILIATED FACILITIES  
FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 121 (a) For the purpose of assisting in the con-  
struction (and the planning for the construction) of  
facilities which will aid in demonstrating provision of  
specialized services for the diagnosis and treatment, edu-  
cation, training, or care of persons with developmental  
disabilities or in the interdisciplinary training of physi-  
cians and other specialized personnel needed for research,  
diagnosis and treatment, education, training, or care of  
persons with developmental disabilities, including re-  
search incidental or related to any of the foregoing  
activities, there are authorized to be appropriated  
\$5,000,000 for the fiscal year ending June 30, 1964,  
\$7,500,000 for the fiscal year ending June 30, 1965,  
\$10,000,000 each for the fiscal year ending June 30, 1965,  
the fiscal year ending June 30, 1967, and the fiscal year  
ending June 30, 1968, and \$20,000,000 for each of the  
next five fiscal years through the fiscal year ending  
June 30, 1973. Except as provided in subsection (b), the  
sums so appropriated shall be used for project grants for

<sup>2</sup> The heading of title I amended by sec. 101 (a) of P.L. 91-517.

<sup>3</sup> Sec. 100 amended by sec. 207(a) of P.L. 91-517.

<sup>4</sup> Section 001 of P.L. 91-296 provides in part that unless expressly  
limited by later enactment, funds appropriated for any fiscal year ending  
prior to July 1, 1973, for any program under this Act shall remain  
available for obligation and expenditure for such fiscal year.

<sup>5</sup> The heading of pt. B amended by sec. 207(b) of P.L. 91-517.

<sup>6</sup> Sec. 121 amended by sees. 2 (a), (b), and (d)(1) of P.L. 90-170, and  
sec. 201 (a) and (b) of P.L. 91-517.

Sec. 513 of the Public Health Service Act authorizes in part, that,  
such portion as the Secretary may determine, up to 1 per centum, of  
any appropriation under any provision of the Mental Retardation Facili-  
ties Construction Act shall be available for evaluation of any program  
authorized thereunder.

construction of public and other nonprofit facilities for persons with developmental disabilities which are associated with a college or university.

(b)<sup>s</sup> (1) Of the sums appropriated pursuant to subsection (a) for any fiscal year, beginning with the fiscal year ending June 30, 1968, an amount equal to 2 per centum thereof (or such smaller amount as the Secretary may determine to be appropriate) shall be available to the Secretary for the purpose of making grants to cover not to exceed 75 per centum of the costs of the planning of projects with respect to the construction of which applications for grants may be made under this part. Not more than \$25,000 shall be granted under this subsection with respect to any project.

(2) Planning grants under this subsection shall be made by the Secretary to such applicants and upon such terms and conditions as he shall by regulations prescribe. Payment of grants under this subsection shall be made in advance or by way of reimbursement, as the Secretary may determine.

(3) Whenever, in the succeeding provisions of this part, the term "grant", "grants", or "funds" is employed, such term shall be deemed not to include any grant under this subsection or any of the funds of any such grant.

#### DEMONSTRATION AND TRAINING GRANTS

SEC. 122.<sup>9</sup> (a) For the purposes of assisting institutions of higher education to contribute more effectively to the solution of complex health, education, and social problems of children and adults suffering from developmental disabilities, the Secretary may, in accordance with the provisions of this part, make grants to cover costs of administering and operating demonstration facilities and interdisciplinary training programs for personnel needed to render specialized services to persons with developmental disabilities, including established disciplines as well as new kinds of training to meet critical shortages in the care of persons with developmental disabilities.

(b) <sup>9a</sup> For the purpose of making grants under this section, there are authorized to be appropriated \$15,000,000 for the fiscal year ending June 30, 1971; \$17,000,000 for the fiscal year ending June 30, 1972; and \$20,000,000 for the fiscal year ending June 3, 1973.

<sup>s</sup> Subsec. 121 (b) added by sec. 2(c) of P.L. 90-170  
 Sec 122 added by sec. 202 of P.L. 91-517.  
 See footnote 7 on p. 300.

## APPLICATIONS

42 u.s.c. 2662 sec. 123. (a) Applications for grants under this part with respect to the construction of any facility may be approved by the Secretary only if the application contains or is supported by reasonable assurances that—

(1) the facility will be associated, to the extent prescribed in regulations of the Secretary, with a college or university hospital (including affiliated hospitals), or with such other part of a college or university as the Secretary may find appropriate in the light of the purposes of this part,;

(2) the plans and specifications are in accord with regulations prescribed by the Secretary under section 139(d) ;

(3) title to the site for the project is or will be vested in one or more of the agencies or institutions filing the application or in a public or other non-profit agency or institution which is to operate the facility;

(4) adequate financial support will be available for construction of the project and for its maintenance and operation when completed; and

49 Stat. 1011 (5) all laborers and mechanics employed by contractors or subcontractors in the performance of work on construction of the project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5) ; and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-15) and section 2 of the Act of June 13, 1984, as amended (40 U.S.C. 276c).

64 Stat. 1267

(b) Applications for demonstration and training grants under this part may be approved by the Secretary only if the applicant is a college or university operating a facility of the type described in section 121, or is a public or nonprofit private agency or organization operating such a facility. In considering applications for such grants, the Secretary shall give priority to any application which shows that the applicant has made arrangements, in accordance with regulations of the Secretary, for a junior college to participate in the programs for which the application is made.

<sup>11</sup> Sees. 122, 123, 124, and 125 renumbered as secs. 123, 124, 125, and 126, respectively, by sec. 202 (of P.L. 91-517).

<sup>11</sup> Sec. 128 amended by sec. 208 of P.L. 91-517.

## AMOUNT OF GRANTS; PAYMENTS

SEC. 124.<sup>12</sup> (a) The total of the grants with respect to any project under this part may not exceed 75 per centum of the necessary cost thereof as determined by the Secretary. 42 u.s.c. 2003

(b) Payments of grants under this part shall be made in advance or by way of reimbursement, and on such conditions as the Secretary may determine.

## RECOVERY

SEC. 125.<sup>13</sup> If any facility with respect to which construction funds have been paid under this part shall, at any time within twenty years after the completion of construction—

(1) be sold or transferred to any person, agency, or organization which is not qualified to tile an application under this part, or u.s.c. 2664

(2) cease to be a public or other nonprofit facility for persons with developmental disabilities, unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities, the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit facility for persons with developmental disabilities, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects.

## NONDUPLICATION OF GRANTS

SEC. 126.<sup>14</sup> No grant may be made after January 1, 1964, under any provision of the Public Health Service Act, for any of the fiscal years in the period beginning July 1, 1964, and ending June 30, 1970, for construction of any facility for persons with developmental disabilities described in this part, unless the Secretary determines that funds are not available under this part to make a grant for the construction of such facility. 42 r.s.c. 2605

<sup>12</sup> Sec. 124 amended by sec. 2(14) of P.L. 91-517.

<sup>13</sup> Sec. 125 amended by secs. 201 (c) and 207 of P.L. 91-517.

<sup>14</sup> Sec. 120 amended by sec. 201(e) of P.L. 91-517.

## MAINTENANCE OF EFFORT

SEC. 127.<sup>15</sup> Applications for grants under this part may be approved by the Secretary only if the application contains or is supported by reasonable assurances that the grants will not result in any decrease in the level of State, local, and other non-Federal funds for services for persons with developmental disabilities and training of persons to provide such services which would (except for such grant) be available to the applicant, but that such grants will be used to supplement, and, to the extent practicable, to increase the level of such funds.

PART C—<sup>16</sup> GRANTS FOR PLANNING, PROVISION OF SERVICES, AND CONSTRUCTION AND OPERATION OF FACILITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

## DECLARATION OF PURPOSE

SEC. 130. The purpose of this part is to authorize—

(a) grants to assist the several States in developing and implementing a comprehensive and continuing plan for meeting the current and future needs for services to persons with developmental disabilities;

(b) grants to assist public or nonprofit private agencies in the construction of facilities for the provision of services to persons with developmental disabilities, including facilities for any of the purposes stated in this section;

(c) grants for provision of services to persons with developmental disabilities, including costs of operation, staffing, and maintenance of facilities for persons with developmental disabilities;

(d) grants for State or local planning, administration, or technical assistance relating to services and facilities for persons with developmental disabilities;

(e) grants for training of specialized personnel needed for the provision of services for persons with developmental disabilities, or research related thereto; and

(f) grants for developing or demonstrating new or improved techniques for the provisions of services for persons with developmental disabilities.

## AUTHORIZATION OF APPROPRIATIONS

SEC. 131. In order to make the grants to carry out the purposes of section 130, there are authorized to be appropriated \$60,000,000 for the fiscal year ending June 30, 1971, \$105,000,000 for the fiscal year ending June 30, 1972, and \$130,000,000 for the fiscal year ending June 30, 1973.

<sup>15</sup> Sec. 127 added by sec. 206 of P.L. 91-517.

<sup>16</sup> Part C amended by sec. 101 (b) of P.L. 91-517.

## STATE ALLOTMENTS

SEC. 132(a) (1) <sup>16a</sup> From the sums appropriated to carry out the purposes of section 130 for each fiscal year, other than amounts reserved by the Secretary for projects under subsection (e), the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of (A) the population, (B) the extent of need for services and facilities for persons with developmental disabilities, and (C) the financial need, of the respective States; except that the allotment of any State (other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) for any such fiscal year shall not be less than \$100,000 plus, if such fiscal year is later than the fiscal year ending June 30, 1971, and if the sums so appropriated for such fiscal year exceed the amount authorized to be appropriated to carry out such purposes for the fiscal year ending June 30, 1971, an amount which bears the same ratio to \$100,000 as the difference between the amount so appropriated and the amount authorized to be appropriated for the fiscal year ending June 30, 1971, bears to the amount authorized to be appropriated for the fiscal year ending June 30, 1971.

(2) In determining, for purposes of paragraph (1), the extent of need in any State for services and facilities for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services specified, pursuant to section 134(b) (5), in the State plan of such State approved under this part.

(3) Sums allotted to a State for a fiscal year and designated by it for construction and remaining unobligated at the end of such year shall remain available to such State for such purpose for the next fiscal year (and for such year only), in addition to the sums allotted to such State for such next fiscal year: *Provided*, That if the maximum amount which may be specified pursuant to section 134(b) (15) for a year plus any part of the amount so specified pursuant thereto for the preceding fiscal year and remaining unobligated at the end thereof is not sufficient to pay the Federal share of the cost of construction of a specific facility included in the construction program of the State developed pursuant to section 131(b) (13), the amount specified pursuant to such section for such preceding year shall remain available for a second additional year for the purpose of paying the Federal share of the cost of construction of such facility.

(b) Whenever the State plan approved in accordance with section 134 provides for participation of more than one State agency in administering or supervising the administration of designated portions of the State plan, the State may apportion its allotment among such agencies in a manner which, to the satisfaction of the Secretary,

<sup>10a</sup> See footnote 7 on p. 300.

is reasonably related to the responsibilities assigned to such agencies in carrying out the purposes of this part. Funds so apportioned to State agencies may be combined with other State or Federal funds authorized to be spent for other purposes, provided the purposes of this part will receive proportionate benefit from the combination.

(c) Whenever the State plan approved in accordance with section 134 provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

(d) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallocation by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount so reallocated to a State for a fiscal year shall be deemed to be a part of its allotment under subsection (a) for such fiscal year.

(e) Of the sums appropriated pursuant to section 181, such amount as the Secretary may determine, but not more than 10 per centum thereof, shall be available for grants by the Secretary to public or nonprofit private agencies to pay up to 90 per centum of the cost of projects for carrying out the purposes of section 130 which in his judgment are of special national significance because they will assist in meeting the needs of the disadvantaged with developmental disabilities, or will demonstrate new or improved techniques for provision of services for such persons, or are otherwise specially significant for carrying out the purposes of this title.

NATIONAL ADVISORY COUNCIL ON SERVICES AND FACILITIES  
FOR THE DEVELOPMENTALLY DISABLED

SEC. 133. (a)(1) Effective July 1, 1971, there is hereby established a National Advisory Council on Services and Facilities for the Developmentally Disabled (hereinafter referred to as the 'Council'), which shall consist of twenty members, not otherwise in the regular full-time employ of the United States, to be appointed by the Secretary without regard to the provisions of title 5, United States



Code, governing; appointments in the competitive civil service.

(2) The Secretary shall from time to time designate one of the members of the Council to serve as Chairman thereof.

(3) The members of the Council shall be selected from leaders in the fields of service to the mentally retarded and other persons with developmental disabilities, including leaders in State or local government, in institutions of higher education, and in organizations representing consumers of such services. At least five members shall be representative of State or local public or nonprofit private agencies responsible for services to persons with developmental disabilities, and at least five shall be representative of the interests of consumers of such services. Membership.

(b) Each member of the Council shall hold for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and except that, of the twenty members first appointed, five shall hold office for a term of three years, five shall hold office for a term of two years, and five shall hold office for a term of one year, as designated by the Secretary at the time of appointment. Term of office.

(c) It shall be the duty and function of the Council to (1) advise the Secretary with respect to any regulations promulgated or proposed to be promulgated by him in the implementation of this title, and (2) study and evaluate programs authorized by this title with a view of determining their effectiveness in carrying out the purposes for which they were established. Duties.

(d) The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such statistical and other pertinent data prepared by or available to the Department of Health, Education, and Welfare as it may require to carry out such functions. Technical. assistance.

(e) Members of the Council, while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be entitled to receive compensation at rates fixed by the Secretary, but at rates not exceeding the daily equivalent of the rate provided for GS-18 of the General Schedule for each day of such service (including travel time), and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. compensation, expenses. note

83 stat. 190

## STATE PLANS

Approval,  
conditions.

SEC. 134. (a) Any State desiring to take advantage of this part must have a State plan submitted to and approved by the Secretary under this section.

(b) In order to be approved by the Secretary under this section, a State plan for the provision of services and facilities for persons with developmental disabilities must—

(1) designate (A) a State planning and advisory council, to be responsible for submitting revisions of the State plan and transmitting such reports as may be required by the Secretary; (B) except as provided in clause (C), the State agency or agencies which shall administer or supervise the administration of the State plan and, if there is more than one such agency, the portion of such plan which each will administer (or the portion the administration of which each will supervise); and (C) a single State agency as the sole agency for administering or supervising the administration of grants for construction under the State plan, except that during fiscal year 1971, the Secretary may waive, in whole or in part, the requirements of this paragraph;

(2) describe (A) the quality, extent, and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans for Federally assisted State programs as may be specified by the Secretary, but in any case including education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health plans, and (B) how funds allotted to the State in accordance with section 132 will be used to complement and augment rather than duplicate or replace services and facilities for persons with developmental disabilities which are eligible for Federal assistance under such other State programs:

(3) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary, are designed to assure effective continuing State planning, evaluation, and delivery of services (both public and private) for persons with developmental disabilities;

(4) contain or be supported by assurances satisfactory to the Secretary that (A) the funds paid to the State under this part will be used to make a significant contribution toward strengthening services for persons with developmental disabilities in the various political subdivisions of the State in order to improve the quality, scope, and extent of such services; (B) part of such funds will be made avail-

able to other public or nonprofit private agencies, institutions, and organizations; (C) such funds will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available for the purposes for which the Federal funds are provided and not to supplant such non-Federal funds; and (D) there will be reasonable State financial participation in the cost of carrying out the State plan;

(5) (A) provide for the furnishing of services and facilities for persons with developmental disabilities associated with mental retardation, (B) specify the other categories of developmental disabilities (approved by the Secretary) which will be included in the State plan, and (C) describe the quality, extent, and scope of such services as will be provided to eligible persons;

(6) provide that services and facilities furnished under the plan for persons with developmental disabilities will be in accordance with standards prescribed by regulations, including standards as to the scope and quality of such services and the maintenance and operation of such facilities, except that during fiscal year 1971, the Secretary may waive, in whole or in part, the requirements of this paragraph;

(7) <sup>17</sup> provide such methods of administration, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Secretary shall exercise no authority with respect to the selection, Tenure of office, and compensation of any individual employed in accordance with such methods), as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(8) provide that the State planning and advisory council shall be adequately staffed, and shall include representatives of each of the principal State agencies and representatives of local agencies and non-governmental organizations and groups concerned with services for persons with developmental disabilities: *Provided*. That at least one-third of the membership of such council shall consist of representatives of consumers of such services;

(9) provide that the State planning and advisory council will from time to time, but not less often than annually, review and evaluate its State plan approved under this section and submit appropriate modifications to the Secretary; Annual

Sec. 208 of P.L. 91-645 transfers to the U.S. Civil Service Commission all functions, powers, and duties of the Secretary insofar as they relate to the prescription of personnel standards on a merit basis.

Records and  
reports  
availability.

Urban or rural  
poverty area,  
special assist-  
ance.

(10) provide that the State agencies designated pursuant to paragraph (1) will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(11) provide that special financial and technical assistance shall be given to areas of urban or rural poverty in providing services and facilities for persons with developmental disabilities who are residents of such areas;

(12) describe the methods to be used to assess the effectiveness and accomplishments of the State, in meeting the needs of persons with developmental disabilities in the State;

(13) provide for the development of a program of construction of facilities for the provision of services for persons with developmental disabilities which (A) is based on a statewide inventory of existing facilities and survey of need ; and (B) meets the requirements prescribed by the Secretary for furnishing needed services to persons unable to pay therefor;

(14) set forth the relative, need, determined in accordance with regulations prescribed by the Secretary, for the several projects included in the construction program referred to in paragraph (13), and assign priority to the construction of projects, insofar as financial resources available therefor and for maintenance and operation make possible, in the, order of such relative need;

(15) specify the per centum of the State's allotment (under section 132) for any year which is to be devoted to construction of facilities, which per centum shall be not more than 50 per centum of the State's allotment or such lesser per centum as the Secretary may from time to time prescribe;

(16) provide for affording to every applicant for a construction project an opportunity for hearing before, the State agency;

(17) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this part; and

(18) contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part.

(c) The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (b). The Secretary shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

## APPROVAL OF PROJECTS FOR CONSTRUCTION

SEC. 135. (a) For each project for construction pursuant to a State plan approved under this part, there shall be submitted to the Secretary, through the State agency designated pursuant to section 134(b) (1) (C), an application by the State or a political subdivision thereof or by a public or nonprofit private agency. If two or more agencies join in the construction of the project, the application may be filed by one or more of such agencies. Such application shall set forth—

Application.

- (1) a description of the site for such project;
- (2) plans and specifications thereof, in accordance with regulations prescribed by the Secretary;
- (3) reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or nonprofit private agency which is to operate the facility;
- (4) reasonable assurance that adequate financial support will be available for the construction of the project and for its maintenance and operation when completed;
- (5) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on construction of the project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5); and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c); and

(0) a certification by the State agency of the Federal share for the project.

(b) The Secretary shall approve such application if sufficient funds to pay the Federal share of the cost of construction of such project are available from the allotment to the State, and if the Secretary finds (1) that the application contains such reasonable assurances as to title, financial support, and payment of prevailing rates of wages and overtime pay, (2) that the plans and specifications are in accord with regulations prescribed by the Secretary, (3) that the application is in conformity with the State plan approved under this part, and (4) that the application has been approved and recommended by the State agency and is entitled to priority over other projects within the State in accordance with the State's plan for persons with developmental disabilities and in accordance with regulations prescribed by the Secretary.

(c) No application shall be disapproved until the Secretary has afforded the State agency an opportunity for a hearing.

(d) Amendment of any approved application shall be subject to approval in the same manner as the original application.

#### WITHHOLDING OF PAYMENTS FOR CONSTRUCTION

SEC. 136. Whenever the Secretary, after reasonable notice and opportunity for hearing to the State planning and advisory council designated pursuant to section 134 (b) (1) (A) and the State agency designated pursuant to section 134(b) (1)(C) finds-

(a) that the State agency is not complying substantially with the provisions required by section 134(b) to be included in the State plan, or with regulations of the Secretary:

(b) that any assurance required to be given in an application tiled under section 135 is not being or cannot be carried out:

(c) that there is a substantial failure to carry out plans and specifications related to construction approved by the Secretary under section 134; or

(d) that adequate funds are not being provided annually for the direct administration of the State plan,

the Secretary may forthwith notify such State council and agency that—

(e) no further payments will be made to the State for construction from allotments under this part: or

(f) no further payments will be made from allotments under this part for any project or projects designated by the Secretary as being affected by the action or inaction referred to in paragraph (a), (b), (c), or (d) of this section:

as the Secretary may determine to be appropriate under the circumstances: and, except with regard to any project for which the application has already been approved and which is not directly affected, further payments for construction projects may be withheld, in whole or in part, until there is no longer any failure to comply (or to carry out the assurance or plans and specifications or to provide adequate funds, as the case may be) or, if such compliance (or other action) is impossible, until the State repays or arranges for the repayment of Federal moneys to which the recipient was not entitled.

#### PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION AND SERVICES

SEC 137. (a)(1) From each State's allotments for a fiscal year under section 132, the State shall be paid the Federal share of the expenditures, other than expendi-

hires for construction, incurred during such year under its State plan approved under this part. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.

(2) For the purpose of determining the Federal share with respect to any State, expenditures by a political subdivision thereof or by nonprofit private agencies, organizations, and groups shall, subject to such limitations and conditions as may be prescribed by regulations, be regarded as expenditures by such State.

(b) (1) Except as provided in paragraph (2), the "Federal share" with respect to any State for purposes of this section for any fiscal year shall be 75 per centum of the expenditures, other than expenditures for construction, incurred by the State during such year under its State plan approved under this part during each of the fiscal years ending June 30, 1971, and June 30, 1972, and 70 per centum of such nonconstruction expenditures during the fiscal year ending June 30, 1973.

Federal

(2) In the case of any project located in an area within a State determined by the Secretary to be an urban or rural poverty area, the "Federal share" with respect to such project for purposes of this section for any fiscal year may be up to 00 per centum of the expenditures, other than expenditures for construction, incurred by the State during such year under its State plan approved under this part with respect to such project for the first twenty-four months of such project, and so per centum of such nonconstruction expenditures for the next twelve months.

urban or rural

#### WITHHOLDING OF PAYMENTS FOR PLANNING, ADMINISTRATION, AND SERVICES

SEC. 138. Whenever the Secretary, after reasonable notice and opportunity for hearing to the State planning and advisory council and the appropriate State agency, designated pursuant to section 134(b)(1) finds that

(a) there is a failure to comply substantially with any of the provisions required by section 134 to be included in the State plan : or

(b) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this part,

the Secretary shall notify such State, council and agency or agencies that further payments will not be made to the State under this part (or, in his discretion, that further payments will not be made to the State under this part

for activities in which there is such failure), until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no further payment to the State under this part, or shall limit further payment under this part to such State to activities in which there is no such failure.

#### REGULATION'S

SEC. 139. The Secretary, as soon as practicable, by general regulations applicable uniformly to all the States, shall prescribe—

(a) the kinds of services which are needed to provide adequate programs for persons with developmental disabilities, the kinds of services which may be provided under a State plan approved under this part, and the categories of persons for whom such services may be provided;

(b) standards as to the scope and quality of services provided for persons with developmental disabilities under a State plan approved under this part;

(c) the general manner in which a State, in carrying out its State plan approved under this part, shall determine priorities for services and facilities based on type of service, categories of persons to be served, and type of disability, with special consideration being given to the needs for such services and facilities in areas of urban and rural poverty; and

(d) general standards of construction and equipment for facilities of different classes and in different types of location.

After appointment of the Council, regulations and revisions therein shall be promulgated by the Secretary only after consultation with Council.

#### NONDUPLICATION

SEC. 140. (a) In determining the amount of any payment for the construction of any facility under a State plan approved under this part, there shall be disregarded (1) any portion of the costs of such construction which are financed by Federal funds provided under any provision of law other than this part, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

(b) In determining the amount of any State's Federal share of expenditures for planning, administration, and services incurred by it under a State plan approved under this part, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than this part, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.



PART D—GRANTS FOR THE COST OF PROFESSIONAL AND  
TECHNICAL PERSONNEL OF COMMUNITY MENTAL RE-  
TARDATION FACILITIES

AUTHORIZATION OF GRANTS

SEC. 141. (a) For the purpose of assisting in the establishment and initial operation of facilities for the mentally retarded providing all or part of a program of comprehensive services for the mentally retarded principally designed to serve the needs of the particular community or communities in or near which the facility is situated, the Secretary may, in accordance with the provisions of this part, make grants to meet, for the temporary periods specified in this section, a portion of the costs (determined pursuant to regulations under section 14-1) of compensation of professional and technical personnel for the initial operation of new facilities for the mentally retarded or of new services in facilities for the mentally retarded.

(1) Grants for such costs for any facility for the mentally retarded under this part may be made only for the period beginning with the first day of the first month for which such a grant is made and ending with the close of four years and three months after such first day; and such grants with respect to any such facility may not exceed 75 per centum of such costs for the period ending with the close of the fifteenth month following such first day, 00 per centum of such costs for the first year thereafter, 45 per centum of such costs for the second year thereafter, and 30 per centum of such costs for the third year thereafter.

(c) In making such grants, the Secretary shall take into account, the relative needs of the several States for services for the mentally retarded, their relative financial needs, and their populations.

APPLICATIONS AND CONDITIONS FOR APPROVAL

SEC. 142 (a) Grants under this part with respect to any facility for the mentally retarded may be made only upon application, and only if—

(1) the applicant, is a public or nonprofit private agency or organization which owns or operates the facility;

(2) (A) a grant was made under part C of this title to assist in financing the construction of the facility or (B) the type of service to be provided as part of such program with the aid of a grant under this part was not previously being provided

by the facility with respect to which such application is made;

(3) the Secretary determines that there is satisfactory assurance that Federal funds made available under this part for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds for mental retardation services that would in the absence of such Federal funds be made available for for under) the program described in paragraph (2) of this subsection, and will in no event supplant such State, local, and other non-Federal funds; and

(4) in the case of an applicant, in a State which has in existence a State plan relating to the provision of services for the mentally retarded, the services to be provided by the facility are consistent with the plan.

(b) No grant may be made under this part after June 30, 1972, with respect to any facility for the mentally retarded or with respect to any type of service provided by such a facility unless a grant with respect thereto was made under this part prior to July 1, 1970.

#### PAYMENTS

SEC. 113. Payment of grants under this part may be made (after necessary adjustment on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and on such terms and conditions and in such installments, as the Secretary may determine.

#### REGULATIONS

SEC 144. The Secretary shall prescribe general regulations concerning the eligibility of facilities under this part, determination of eligible costs with respect to which grants may be made, and the terms and conditions (including those specified in section 142) for approving applications under this part.

#### AUTHORIZATION OF APPROPRIATIONS

SEC. 145.<sup>5a</sup> There are authorized to be appropriated \$7,000,000 for the fiscal year ending June 30, 1968, \$10,000,000 for the fiscal year ending June 30, 1969, and \$14,000,000 for the fiscal year ending June 30, 1970, to enable the Secretary to make initial grants to facilities for the mentally retarded under the provisions of this part. For the fiscal year ending June 30, 1969, and each of the next five years, there are authorized to be appropriated such sums as may be necessary to make grants to such facilities which have previously received a grant under this part and are eligible for such a grant for the year for which sums are being appropriated under this sentence.

See footnote 7 on p. 300.

## TITLE IV—GENERAL

### DEFINITIONS

42 U.S.C. 2691 SEC. 401.<sup>1</sup> For purposes of this Act—

(a) The term "State" includes Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

(b) The term "facility for persons with developmental disabilities" means a facility, or a specified portion of a facility, designed primarily for the delivery of one or more services to persons with one or more developmental disabilities.

(c) The term "community mental health center" means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated.

(d) The terms "nonprofit facility for persons with developmental disabilities", "nonprofit community mental health center", and "nonprofit private institution of higher learning" mean, respectively, a facility for persons with developmental disabilities, a community mental health center, and an institution of higher learning which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and the term "nonprofit private agency or organization" means an agency or organization which is such a corporation or association or which is owned and operated by one or more of such corporations or associations.

(e) The term "construction" includes construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical transportation facilities); including architects fees, but excluding the cost of off-site, improvements and the cost of the acquisition of land.

(f) The term "cost of construction" means the amount found by the Secretary to be necessary for the construction of a project.

<sup>1</sup> Sec. 401, amended by P.L. 91-517, to apply with respect to fiscal years beginning after 6/30/70, as follows :

(a) Sec. 401 (a ) amended by sec. 102(a) (1), P.L. 91-517.

(b) Sec. 401(b) amended by sec. 102(a)(2), P.L. 91-517

(c) Sec. 401(d) amended by sec. 102(a) (3), P.L. 91-517.

Sec. 401 (e) amended by sec. 4 (b) of P.L. 90- 31

(g) The term "title", when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than fifty years undisturbed use and possession for the purposes of construction and operation of the project.

(h) (1) The term "Federal share." with respect to any project means the portion of the cost of construction of such project to be paid by the Federal Government under part C of title I or part A of title II.

(2) The Federal share with respect to any project in the State shall be the amount determined by the appropriate State agency designated in the State plan, but, except as provided in paragraph (3), the Federal share (A) for any project under part C of title I may not exceed  $66\frac{2}{3}$  per centum of the costs of construction of such project; and (B) for any project under part A of title II may not exceed  $66\frac{2}{3}$  per centum of the costs of construction of such project or the State's Federal percentage, whichever is the lower. Prior to the approval of the first such project in the State during any fiscal year, such State agency shall give the Secretary written notification of the maximum Federal share established pursuant to this paragraph for such projects in such State to be approved by the Secretary during such fiscal year and the method for determining the actual Federal share to be paid with respect to such projects; and such maximum Federal share and such method of determination for such projects in such State approved during such fiscal year shall not be changed after the approval of the first such project in the State during such fiscal year.

(3) In the case of any facility or center which provides or will, upon completion of the project for which application has been made under part V of title I or under part A of title II, provide services for persons in an area designated by the Secretary as an urban or rural poverty area, the maximum Federal share determined under paragraph (2) may not exceed 90 per centum of the costs of construction of the project.

(i) The Federal percentage for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that the Federal percentage for Puerto Rico, Guam, American Samoa, and the Virgin Islands shall be  $66\frac{2}{3}$  per centum.

(j) (1) The Federal percentages shall be promulgated by the Secretary between July 1 and September 30 of each

Sec. 401 (h) amended by sec. 104 of P.L. 91-211, and sec. 401(h)(2) further amended by sec. 102(a) (4) of P.L. 91-517.

\* Sec. 401 (j)(1) amended by sec. 101 of P.L. 91-211.

even-numbered year, on the basis of the average of the per capita incomes of the States and of the United States for the three most recent consecutive years for which satisfactory data, are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation; except that the Secretary shall promulgate such percentages as soon as possible after the enactment of this Act, which promulgation shall be conclusive for the fiscal year ending June 30, 1965.

(2) The term "United States" means (but only for purposes of this subsection and subsection (i)) the fifty States and the District of Columbia.

(k) The term "Secretary" means the Secretary of Health, Education, and "Welfare.

(l) The term "developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition of an individual found by the Secretary to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual.

(m) The term "services for persons with developmental disabilities" means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, and such term includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

(n) The term "regulations" means (unless the text otherwise indicates) regulations promulgated by the Secretary.

#### STATE STANDARDS FOR VARIABLE FEDERAL SHAKE

SEC. 402 \* \* \*

<sup>5</sup> SEC. 401 amended to add new subsecs. (l), (m), and (n), by sec. 102(b) of P.L. 91-517.

Sec. 402 repealed by sec. 104 of P.L. 91-211.

## PAYMENTS For CONSTRUCTION

SEC. 4037 (a) Upon certification to the Secretary by the State agency, designated as provided in section 134 in the case of a facility for the mentally retarded or persons with other developmental disabilities, or section 204 in the case of a community mental health center, based upon inspection by it, that work has been performed upon a project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment is due to the applicant, such installment shall be paid to the State, from the applicable allotment of such State, except that (1) if the State is not authorized by law to make payments to the applicant, the payment shall be made directly to the applicant, (2) if the Secretary, after investigation or otherwise, has reason to believe, that any act (or failure to act) has occurred requiring action pursuant to section 136 or section 205, as the case may be, payment may, after he has given the State agency so designated notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on such hearing, and (3) the total of payments under this subsection with respect to such project may not exceed an amount equal to the Federal share of the cost of construction of such project.

(b) In case an amendment to an approved application is approved as provided in section 135 or 205 or the estimated cost of a project is revised upward, any additional payment with respect thereto may be, made from the applicable allotment of the State for the fiscal year in which such amendment or revision is approved.

(c) (1) At the request of any State, a portion of any allotment or allotments of such State under part A of title II for any fiscal year shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient administration of the State plan approved under such part; except that, not more than 5 per centum of the total of the allotments of such State for any fiscal year, or \$50,000, whichever is less, shall be, available for such purpose. Amounts made available to any State under this paragraph from its allotment, or allotments under part A of title II for any fiscal year shall be available only for such expenditures (referred to in the preceding sentence) during such fiscal year or the following fiscal year. Payments of amounts due under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

~ Sec. 4(b) amended by SIT. 102(b) of P.L. 91-17.

" Sec. 4(b) added by sec. 502 of IM., 10-74.

" Sec. 4(b) amended by sec. 103 of P.L. 91-211.

(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from State sources for such year for administration of the State plan approved under such part A not less than the total amount expended for such purposes from such sources during the fiscal year ending June 30, 1968.

## JUDICIAL

u.s.c. 2094      SEC. 404.<sup>10</sup> If the Secretary refuses to approve any application for a project, submitted under section 135 or 205, the State agency through which such application was submitted, or if any State is dissatisfied with his action under section 134(e) or 204(b) or section 136 or 206, such State, may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within 60 days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in  
stat. 941      section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside his order. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court, the record of the further proceedings. Such new or modified findings of fact, shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of  
statas      the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action.

## RECOVERY

u.s.c. 2695      Sec 405. If any facility or center with respect to which funds have been paid under section 403 shall, at any time within twenty years after the completion of construction—

<sup>10</sup> Sec 404 amended by sec. 102(c) of P.L. 91-517.

<sup>11</sup> Sees. 405 and 406 amended by sec. 102(b) of P.L. 91-517.

(1) be sold or transferred to any person, agency, or organization (A) which is not qualified to file an application under section 135 or 205, or (B) which is not approved as a transferee by the State agency designated pursuant to section 134 (in the case of a facility for the mentally retarded or persons with other developmental disabilities) or section 204 (in case of a community mental health center), or its successor; or

(2) cease to be a public or other nonprofit facility for the mentally retarded or persons with other developmental disabilities or community mental health center, as the case may be, unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for the mentally retarded or persons with other developmental disabilities or such center as a community mental health center,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility or center which has ceased to be public or other nonprofit facility for the mentally retarded or persons with other developmental disabilities or community mental health center, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment.

#### STATE CONTROL OF OPERATIONS

SEC. 406.<sup>11</sup> Except as otherwise specifically provided, nothing in this Act shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility for the mentally retarded or persons with other developmental disabilities or community mental health center with respect to which any funds have been or may be expended under this Act. u.s.c. 2696

\* \* \* \* \*



## RECORDS AND AUDIT

SEC. 408.<sup>12</sup> (a) Each recipient of assistance under this Act shall keep such records as the Secretary shall presents, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the assistance received under this Act.

## NONDUPLICATION

SEC. 409.<sup>13</sup> In determining the amount of any grant under this Act for the costs of any project there shall be excluded from such costs an amount equal to the sum of (1) the amount of any other Federal grant which the applicant has obtained, or is assured of obtaining, with respect to such project, and (2) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

## DETERMINATION OF POVERTY AREA

SEC. 410.<sup>11</sup> For purposes of any determination by the Secretary under this Act as to whether any urban or rural area is a poverty area, any such area which would not otherwise be determined to be a poverty area shall, nevertheless, be deemed to be a poverty area if—

(1) such area contains one or more subareas which are characterized as subareas of poverty;

(2) the population of such subarea or subareas constitutes a significant portion of the population of such rural or urban area ; and

(3) the project, facility, or activity, in connection with which such determination is made, does, or (when completed or put into operation) will, serve the needs of the residents of such subarea or subareas.

Sec. 408 added by sec. 3 of P.L. 89-105.  
Sec. 409 added by sec. 304 of P.L. 90-574.  
Sec. 410 added by sec. 504 of P.L. 91-211.

[EXCERPT FROM PUBLIC LAW 91-296, JUNE 30, 1970]

TITLE VI—AVAILABILITY OF  
APPROPRIATIONS

Sec. 601. Notwithstanding any other provision of law, unless enacted after the enactment of this Act expressly in limitation of the provisions of this section, funds appropriated for any fiscal year ending prior to July 1, 1973, to carry out any program for which appropriations are authorized by the Public Health Service Act (Public Law 410, Seventy-eighth Congress, as amended) or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88-104, as amended) shall remain available for obligation and expenditure until the end of such fiscal year. 77 stat. 2s-

(265)

**PUBLIC HEALTH SERVICE ACT, AS AMENDED**

EVALUATION OF PROGRAMS

Sec. 513/ Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation for grants, contracts, or other payments under any provision of this Act, the Mental Retardation Facilities Construction Act, the Community Mental Health Centers Act, the Act of August 5, 1954 (Public Law 568, Eighty-third Congress), or the Act of August 16, 1957 (Public Law 85-151), for any fiscal year beginning after June 30, 1970, shall be available for evaluation (directly, or by grants or contracts) of any program authorized by this Act or any of such other acts, and, in the case of allotments from any such appropriation, the amount available for allotment shall be reduced accordingly.

"Sec. 509 was amended by sec. 7 of P.L. 781, 80th Congress. Note that the term "National Institute of Health" did not appear in this section on 11/1/65. effective (late of sec. 6(b) of the National Heart Act (P.L. 655, 80th Congress) which directed that the term, wherever appearing in the "Public Health Service Act, be changed to "National Institutes of Health."

<sup>1</sup> Sec. 510 amend by the Act of June 125, 104S, C2 Stat. SO!).

<sup>2</sup> Sec. 512 added by Sec. 103(a) of P.L. 911-574.

<sup>3</sup> Sec. 511 added by Sec. 401 (a) of P.L. 91-290.

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
WASHINGTON, D.C. 20201

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